

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request for Arbitration of
Interconnection Agreements by Mankato
Citizens Telephone Company, Mid-
Communications, Inc., and Crystal
Communications Inc., with Qwest Wireless
LLC and TW Wireless LLC pursuant to Minn.
Rules pt. 7811.1700

ISSUE DATE: October 6, 2003

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03-1448

ORDER GRANTING ARBITRATION AND
ASSIGNING ARBITRATOR

PROCEDURAL HISTORY

On September 9, 2003, Mankato Citizens Telephone Company, Mid-Communications, Inc., and Crystal Communications, Inc. (each d/b/a Hickory Tech) (The Hickory Tech Companies or Petitioners) filed a request for arbitration of unresolved issues relating to interconnection negotiations between the Petitioners and Qwest Wireless LLC and TW Wireless LLC (collectively Wireless Carriers) pursuant to Minn. Rules Part 7812.1700.

For purposes of this arbitration the parties agreed that the 160th day of negotiation was September 9, 2003, the date of this filing.

This matter came before the Commission on October 2, 2003.

FINDINGS AND CONCLUSIONS

I. The Hickory Tech Companies Petition

The three wireline petitioners (Hickory Tech Companies) are seeking compensation for use of their respective networks by the two Wireless Carriers in the termination of calls from the Wireless Carriers to landline customers. The only outstanding issue is the effective date of the agreement. This will determine the periods of time for which reciprocal compensation is owing between the parties.

The Petitioners stated that the form of agreements, network configurations for traffic exchange and applicable rates have been agreed upon by the parties.

The Petitioners requested expedited arbitration, to commence as soon as possible, pursuant to Minn. Rules Part 7811.1700, to resolve this single outstanding issue.

II. The Decision to Arbitrate

A. Background

The Federal Telecommunications Act of 1996 (the Act),¹ Section 252(b)(1), establishes the right of a negotiating party to request arbitration from a State commission. The Act states:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(2)(A) of the Act imposes three conditions for a valid arbitration filing. First, the petitioner must be a party to the negotiations. Second, the petitioner must file its request within the prescribed 135 to 160 day window following the request for negotiation. Finally, the petitioner must include as part of its petition all relevant documentation concerning the issues and the parties' positions on those issues.²

B. Commission Action

The Commission finds that the Hickory Tech Companies meet all three conditions in the Act as well as the more specific requirements of Minn. Rules Part 7812.1700, Subp 1. The Hickory Tech Companies, as the collective party that requested negotiations, qualifies as one of the parties to the negotiations. The Hickory Tech Companies filed their petition September 9, 2003, the 160th day after the April 2, 2003 start of formal negotiations, which places the filing date within the 135 to 160 day window. Finally, the Hickory Tech Companies' petition states the issue for arbitration and states the position of the negotiating parties on the submitted issue.

Since the Hickory Tech Companies meet the three conditions for arbitration filings under the Act, the Commission will grant the Hickory Tech Companies' request for arbitration.

III. Assignment of Arbitrators

The Commission will send this matter to the Office of Administrative Hearings for arbitration proceedings under Minn. Rules Part 7812.1700. The Administrative Law Judge assigned to this arbitration is Beverly Jones Heydinger.

¹ Federal Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

² The Commission has adopted a rule which, as relates to eligibility for arbitration, closely reflects the federal requirements and provides direction regarding what must be filed to meet the federal requirement that the party seeking arbitration file "all relevant documentation concerning the issues and the parties' positions on those issues." See Minn. Rules, Part 7812.1700, Subp. 1.

The Commission requests that the arbitrator conduct the arbitration consistent with the Commission's arbitration rules, Minn. Rules, Parts 7812.1700. Pertinent parts of which are discussed below:

- Subpart 16 provides that the assigned arbitrator must hold at least one prehearing conference no later than ten days after the response to the petition is received. Since the Wireless Carriers response must be filed no later than October 4, 2003, the prehearing conference must be scheduled to take place on or before October 14, 2003, assuming that the Wireless Carriers respond by October 4, 2003. This requirement will be met since the Prehearing Conference will be held on October 13, 2003 at 9:30 A.M. in the Commission's Small Hearing Room.
- Subpart 19 provides that the arbitrator must issue a recommended decision in writing "no later than 35 days before the date nine months after the request for negotiation that gave rise to the arbitration." Thus, the arbitrator's recommended decision is due no later than November 28, 2003.

The Commission emphasizes the importance of this timetable because its own schedule for taking final action on AT&T's petition is tight. Subpart 21 of the Commission's Arbitration Rules requires that the Commission issue a final arbitration decision no later than 35 days after receiving the arbitrator's recommended decision. Assuming the arbitrator's recommendation is submitted November 28, 2003, the Commission has until January 2, 2004 in which to make a final decision.

ORDER

1. The Commission hereby assigns this matter to Administrative Law Judge Beverly Jones Heydinger for arbitration. The arbitrator is requested to conduct the arbitration consistent with the Commission's Arbitration Rules (Minn. Rules, Part 7812.1700), as discussed in the text of this Order, and provide a recommendation in this matter no later than November 28, 2003.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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